IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7720 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRIT PADMNABH VYAS

Versus

KIRITKUMAR M. DAVE

Appearance:

1. Criminal Misc.Application No. 7720 of 2004

PARTY-IN-PERSON for Petitioner No. 1

SERVED BY RPAD - (R) for Respondent No. 1

MR RM CHAUHAN, APP for Respondent No.2 - STATE

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. Heard Mr.Kirit Padmnabha Vyas, party-in-person -

petitioner and learned APP Mr.R.M.Chauhan, for respondent No.2 - State.

2. However, original complainant Kirit M. Dave, respondent No.1 though served with the notice of rule has not appeared. Vide order dated 26.10.2004, after hearing the parties, this Court was pleased to issue rule making it returnable on 25.11.2004 and Criminal Case No.2535 of 1997, pending before the Court of learned Chief Judicial Magistrate, Nadiad was stayed, by way of an interim relief.

3. When the matter was called out today, again respondent No.1 - original complainant Kirit M. Dave is not present. Party-in-person Kirit P. Vyas and learned APP Mr.R.M.Chauhan, for respondent No.2 - State, therefore, were heard.

4. The present respondent No.1 - Kirit M. Dave filed a Criminal Case in the Court of learned Chief Judicial Magistrate, Nadiad being Criminal Case No.2535 of 1997 against the present petitioner under Section 138 of Negotiable Instruments Act. After the evidence of complainant was over, the present petitioner-accused stepped into the witness box and requested the learned Chief Judicial Magistrate to issue summons to his defence witnesses named as [1] M/s.Snehal Patel, [2] M/s.Saurabh Investment, [3] Mr.Nitin Rawal and [4] M/s.Chimanlal J. Dalal, out of which the deposition of Mr.Nitin Rawal was over, while defence witness M/s.Chimanlal J. Dalal was dropped by the accused as defence witness, but, however, those summons to other two witnesses were returned back with the endorsement that they were not traceable. As per the averments made in this application, it appears that the learned Chief Judicial Magistrate proceeded to close the case instead of resorting to legal process for attendance of the witnesses in the Court and asked the accused - present petitioner to bring the witnesses and, therefore, this petition preferred by the petitioner.

5. However, when an accused intends to examine witnesses as his defence witnesses and when law provides machinery to compel the attendance of the witnesses in the Court, the closing of the case on the endorsement of the summons that the witnesses are not traceable would be inappropriate course to be adopted by the Court. Therefore, while disposing of this petition, the following directions are issued to the learned Chief Judicial Magistrate.

Learned Chief Judicial Magistrate shall resort to

the provisions of Chapter-VI A, B and C of Cr.P.C. for compelling the attendance of defence witnesses and unless this process is resorted to the case of the accused shall not be closed.

6, The application stands disposed of, with the above directions. Rule is made absolute to the above extent.

[J. R. VORA,J.]

(vijay)